

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:07-HC-2123-BO
5:08-HC-2095-BO
5:08-HC-2156-BO
5:08-HC-2183-BO
5:09-HC-2045-BO
5:09-HC-2083-BO
5:10-HC-2013-BO
5:10-HC-2022-BO
5:10-HC-2124-BO
5:10-HC-2151-BO
5:10-HC-2153-BO

UNITED STATES OF AMERICA,)
PETITIONER,)
)
V.)
)
GRADY EWING MAYS, JOSEPH)
AARON EDWARDS, GERALD WAYNE)
TIMMS, THOMAS HEYER, ANTON)
JOHNSON, CLYDE M. HALL, SEAN)
ROBERT FRANCIS, CARLOS)
OFARRIT-FIGUEROA, PETER M.)
EBEL, WALTER WOODEN, LARRY)
ARGUS SULLIVAN.)
RESPONDENTS.)
_____)

STATUS CONFERENCE

AT RALEIGH
JANUARY 21, 2011
BEFORE THE HONORABLE TERRENCE W. BOYLE
U. S. DISTRICT JUDGE

APPEARANCES :

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COURT REPORTER: DONNA J. TOMAWSKI
STENOTYPE WITH COMPUTER AIDED TRANSCRIPTION

1 THURSDAY, JANUARY 20, 2011

2 **THE COURT:** ALL RIGHT. MR. MCNAMARA, DO YOU AND
3 YOUR PEOPLE WANT TO COME UP, BECAUSE YOU ARE IN PROBABLY
4 MORE CASES THAN ANYONE ELSE. I'LL START OUT WITH YOU.

5 **MR. MCNAMARA:** YES, YOUR HONOR.

6 **THE COURT:** GOOD MORNING, MR. RENFER.

7 **MR. RENFER:** GOOD MORNING.

8 **THE COURT:** GOOD MORNING, MR. GRAY.

9 **MR. GRAY:** GOOD MORNING.

10 **MR. MCNAMARA:** GOOD MORNING, YOUR HONOR.

11 **THE COURT:** GOOD MORNING.

12 THESE ARE SOME OF MY THOUGHTS ABOUT WHAT I'D LIKE TO
13 BEGIN TO DO. SINCE THESE ARE CIVIL CASES, THE WAY THEY'RE
14 PRESENTED NOW, I DON'T BELIEVE THERE'S ANY IMPEDIMENT WITH
15 REGARD TO SCHEDULING MATTERS WITHOUT HAVING TO BRING THE
16 DETAINEES IN EVERY TIME. ANYBODY THINK DIFFERENTLY?

17 **MR. RENFER:** I BELIEVE THAT'S CORRECT, YOUR
18 HONOR.

19 **MR. MCNAMARA:** THAT'S FINE.

20 **THE COURT:** AND THAT WILL HELP US. I HAVEN'T
21 MADE UP MY MIND YET, AS FAR AS MY CASES GO, TO WHAT EXTENT
22 AND HOW CONSTANTLY WE NEED TO HAVE THE DETAINEE IN COURT
23 FOR PROCEEDINGS. THERE'S NO CONFRONTATION CLAUSE, RIGHT,
24 IF WE'RE PROCEEDING IN CIVIL COURT, AND THERE'S NO FIFTH
25 AMENDMENT INCRIMINATION, RIGHT?

1 I DON'T KNOW OFF THE TOP OF MY HEAD. WHAT DUE
2 PROCESS RIGHTS ARE INVOLVED IN BEING HERE DURING THE
3 HEARINGS? I JUST DON'T KNOW. WHAT DO YOU THINK?

4 **MR. RENFER:** YOUR HONOR, IN A DIFFERENT CONTEXT,
5 IN PRISONER LITIGATION, WHETHER IT BE IN THE 2255, CERTAIN
6 PROCEEDINGS, OBVIOUSLY EVIDENTIARY PROCEEDINGS THEY WOULD
7 HAVE TO BE THERE. BUT IN OTHER CIVIL LITIGATION, THERE'S
8 NO CONSTITUTIONAL RIGHT TO BE PRESENT FOR A PRISONER.

9 **THE COURT:** IN A CIVIL CASE?

10 **MR. RENFER:** IN A CIVIL CASE, BECAUSE OF THE
11 AVAILABILITY OF THE CIVIL PROCEDURE, DISCOVERY, ET CETERA.
12 BUT THERE'S NO CONSTITUTIONAL RIGHT TO BE PRESENT AT ANY
13 HEARING OR A PARTICULAR TRIAL IN THIS MATTER.

14 **THE COURT:** OF COURSE, THEY HAVE THE RIGHT TO
15 PUT ON WITNESSES, THE DUE PROCESS RIGHTS, SO THEY COULD BE
16 PRESENT TO TESTIFY.

17 **MR. RENFER:** ABSOLUTELY.

18 **THE COURT:** AND WHETHER THE DETAINEE HAS TO BE
19 PRESENT DURING THE TRIAL TO HEAR THE EVIDENCE, I DON'T
20 KNOW. I HAVEN'T FIGURED THAT OUT.

21 **MR. RENFER:** I DON'T BELIEVE IT'S REQUIRED JUST
22 BECAUSE OF CIVIL DISCOVERY, ALTHOUGH I THINK WITHOUT ANY
23 QUESTION IN THESE CASES, YOUR HONOR, NOBODY IS GOING TO
24 QUESTION THE RIGHT OF THE DETAINEE OR THE ADVISABILITY OF
25 THE DETAINEE BEING HERE FOR THE TRIAL OF THE CASE,

1 OBVIOUSLY.

2 **MR. MCNAMARA:** YOUR HONOR, ONE THING IF YOU
3 COULD KEEP IN MIND, YOU KNOW WE'VE HAD A DIFFICULT TIME
4 WITH A NUMBER OF THESE MEN AND THEY FALL OUT OF FAVOR WITH
5 OUR OFFICE REPRESENTING THEM QUICKLY.

6 **THE COURT:** YEAH.

7 **MR. MCNAMARA:** AND THEN THEY WANT TO FILE
8 MOTIONS TO WITHDRAW AND THEY ACTUALLY FILE MOTIONS TO GET
9 US OUT OF THE CASE.

10 **THE COURT:** RIGHT.

11 **MR. MCNAMARA:** FOR THAT PURPOSE ALONE, IF WE
12 COULD KEEP IN MIND THAT IT MIGHT BE HELPFUL TO HAVE THEM
13 HERE SOMETIMES, BUT PARTICULARLY DURING THE TRIAL. I
14 THINK WE DO NEED THEM HERE AT THAT STAGE BECAUSE THEY MAY
15 TESTIFY, FOR ALL WE KNOW.

16 **THE COURT:** RIGHT.

17 **MR. RENFER:** SURE.

18 **THE COURT:** OR MAY BE CALLED AS A WITNESS.
19 CAN'T THEY BE CALLED BY THE GOVERNMENT AS AN ADVERSE
20 WITNESS?

21 **MR. RENFER:** YES, YOUR HONOR. ONE THING, I
22 DON'T BELIEVE YOU WERE MAKING A COMMENT ON THIS, IN FACT,
23 BUT IN FACT THEY DO HAVE A RIGHT TO ASSERT, IN A CIVIL
24 CASE, A FIFTH AMENDMENT PRIVILEGE.

25 **THE COURT:** RIGHT. BUT THAT WOULD BE JUST LIKE

1 ANY OTHER PERSON WHO MIGHT HAVE COMMITTED A CRIME.

2 MR. RENFER: CORRECT.

3 THE COURT: THEY CAN SAY, I DON'T WANT TO ANSWER
4 THAT QUESTION BECAUSE IT MAY TEND TO INCRIMINATE ME AND
5 PROVIDE INFORMATION THAT YOU DON'T OTHERWISE HAVE OR
6 PROVIDE INFORMATION DIRECTLY AGAINST MYSELF. IF IT'S NOT
7 INVOLVING A CRIME BUT INVOLVING THINGS THAT ARE ADMITTED
8 OR ARE BENIGN, OR THAT SORT OF THING, YOU COULD PUT THEM
9 ON THE WITNESS STAND AND ASK THEM QUESTIONS.

10 MR. RENFER: ABSOLUTELY. YOU ARE ABSOLUTELY
11 CORRECT, YES.

12 THE COURT: WHICH I DON'T KNOW THAT ANYBODY'S,
13 YOU KNOW, PENETRATED INTO THE PROCESS YET TO THINK ABOUT
14 IT. THE WAY YOU MAY TRY ONE OF THESE CASES IS JOHN SMITH,
15 DETAINEE, TAKE THE STAND, YOU SWEAR TO TELL THE TRUTH,
16 YEAH. OKAY. I'M GOING TO TALK TO YOU ABOUT YOUR
17 BACKGROUND AND YOUR LIFE EXPERIENCES HERE. I DON'T WANT
18 TO ANSWER. WELL, YOU HAVE TO ANSWER.

19 MR. RENFER: THAT'S CORRECT.

20 THE COURT: OR YOU DON'T HAVE TO ANSWER BUT
21 WE'RE NOT GOING TO HEAR ANY EVIDENCE FROM YOU IF YOU DON'T
22 ANSWER.

23 MR. RENFER: OBVIOUSLY, AS YOU INDICATED, WE'VE
24 NOT GOTTEN DOWN THAT PATHWAY BUT, YES, WE HAVE DISCUSSED,
25 INTERNALLY DISCUSSED TRIAL TACTICS, IF YOU WILL, YES, SIR.

1 **THE COURT:** YOU KNOW, ONCE YOU LAY DOWN THE
2 GRID, THE GRAPH PAPER FOR A CIVIL CASE, AND AS CIVIL TRIAL
3 LAWYERS WE REMEMBER THE THINGS THAT HAPPENED OR CAN HAPPEN
4 IN A CIVIL CASE, THIS TAKES ON A DIFFERENT COMPLEXION
5 BECAUSE THE SORT OF IMPLICATION OR THE INFERENCE THAT'S
6 BEEN GOING ON THROUGHOUT HAS BEEN WELL, YOU KNOW, IT'S
7 LIKE A CRIME BUT IT MAY NOT REALLY BE LIKE A CRIME.

8 **MR. MCNAMARA:** AND ALSO --

9 **THE COURT:** -- AND THAT'S GOING TO, IF YOU START
10 TO THINK IN THOSE TERMS, THAT'S GOING TO CHANGE THE
11 EXPECTATIONS ABOUT THE TRIAL WORK, BECAUSE I'VE TRIED
12 NON-JURY CIVIL CASES AS THE JUDGE ALONE, AS I'M SURE MOST
13 OF THE JUDGES OR ALL OF THEM HAVE, AND THOSE ARE DIFFERENT
14 EXPERIENCES FROM TRYING A JURY TRIAL, A CIVIL JURY TRIAL.

15 FOR INSTANCE, I CAN START AND STOP THE CASE WHENEVER
16 I WANT, AND I CAN BREAK IT UP WHENEVER I WANT, AND I CAN
17 ASK QUESTIONS AND I CAN MAKE IT GO FAST OR SLOW. SO I
18 CAN'T IMAGINE HAVING A NON-JURY CIVIL TRIAL IN SOME OTHER
19 CONTEXT WHERE I WOULD SIT UP HERE FOR DAYS OR WEEKS AND
20 LET THINGS JUST DRIBBLE OUT. I MEAN, I'D BE SAYING, WELL
21 UNDER, WHAT IS IT RULE 41, I'M GOING TO GET TO THE MEAT OF
22 THIS AND I THINK RULE -- I HAVEN'T LOOKED AT IT IN AGES,
23 BUT I THINK RULE 41 ALLOWS YOU TO MAKE A RUNNING SET OF
24 FINDINGS.

25 ANYBODY KNOW WHAT RULE 41 SAYS? I THINK YOU CAN --

1 **MR. RENFER:** I THOUGHT IT WAS -- WAS IT RULE 50?

2 **THE COURT:** MAYBE IT'S RULE 50. OKAY. YEAH,
3 IT'S RULE 50; 41 IS THE DISMISSAL.

4 IN A CIVIL CASE YOU CAN STOP AT SOME POINT, EVEN
5 DURING THE PARTY WHO HAS THE BURDEN OF PROOF'S
6 PRESENTATION OF EVIDENCE AND SAY, ALL RIGHT, THIS IS A
7 FACT. IT'S NOT ENCOURAGED BUT IT'S PERMITTED.

8 I DON'T NEED TO HEAR ANYMORE ABOUT THIS, THIS IS A
9 FACT OR THIS IS A FACT OR THIS IS A FACT. SO THERE ARE
10 TOOLS THAT MAY BE AS YET UNEXPLORED IN THE WAY THESE CASES
11 ARE TRIED. SO I'VE GOT 23 CASES, I BELIEVE, BY MY COUNT.

12 **MR. RENFER:** THAT'S CORRECT.

13 **THE COURT:** THIRTEEN OF WHICH ARE NOT IN THIS
14 COURT BECAUSE OF THE JURISDICTIONAL BAR; THEY'RE IN THE
15 4TH CIRCUIT?

16 **MR. RENFER:** I'M NOT SURE. MR. TIMMS.

17 **THE COURT:** HE'S BACK HERE.

18 **MR. RENFER:** HE'S BACK HERE, AND I THINK IT
19 WOULD BE 12 THAT ARE IN THE 4TH CIRCUIT. MR. TIMMS WOULD
20 HAVE BEEN THE NUMBER 13 BUT HIS 2241 IS STILL IN THE 4TH
21 CIRCUIT, BUT THE 4248 IS IN THIS COURT.

22 **THE COURT:** YOU ARE RIGHT. THERE ARE 11,
23 INCLUDING TIMMS, THAT ARE STILL IN THIS COURT.

24 **MR. RENFER:** THAT'S CORRECT.

25 **THE COURT:** AND ONLY ONE OF THEM, EDWARDS,

1 HERETOFORE HAS FILED A REQUEST FOR HEARING?

2 **MR. RENFER:** THAT IS CORRECT. AND THE
3 GOVERNMENT'S INITIAL DISCLOSURES HAVE BEEN PRODUCED IN A
4 TIMELY FASHION TO THE RESPONDENT, YOUR HONOR.

5 **THE COURT:** OKAY. YOU CAN HAVE A SEAT. YOU
6 DON'T HAVE TO STAND UP FOR THESE THINGS.

7 YOU KNOW THERE'S TROUBLE WHEN I OPEN A RULE BOOK.

8 **MR. RENFER:** I HOPE I WAS RIGHT ON RULE 50.

9 **THE COURT:** IT'S RULE 52.

10 **MR. RENFER:** THANK YOU, YOUR HONOR.

11 **THE COURT:** RULE 52(C). THAT'S WHAT I WAS
12 THINKING.

13 UNDER RULE 26, WHY DO WE HAVE TO WAIT ALL THIS TIME?
14 WHY CAN'T WE SCHEDULE A TRIAL AND JUST START IN ON THE
15 EVIDENCE AND THEN IF YOU FIND THAT THERE'S SOMETHING THAT
16 YOU DIDN'T KNOW ABOUT, YOU CAN TAKE A BREAK AND YOU CAN
17 LEARN IT. WHY COULDN'T WE DO THAT, MR. MCNAMARA?

18 **MR. MCNAMARA:** WELL, YOUR HONOR, WE DO NEED TIME
19 FOR THE GOVERNMENT TO GET THE DISCOVERY TO US.

20 **THE COURT:** I'M SAYING LET'S FORGET ABOUT THE
21 DISCOVERY, LET'S JUST GO AHEAD AND START THE TRIAL AND IF
22 YOU HEAR SOMETHING OR LEARN SOMETHING THAT IS -- THAT
23 CATCHES YOU BY SURPRISE OR IS DISARMING, THEN SAY WELL, I
24 HAVEN'T THOUGHT ABOUT THAT, CAN WE HAVE A BREAK AND LET'S
25 TALK ABOUT IT?

1 I REALLY DON'T SEE WHY WE NEED TO SPEND MONTHS AND
2 MONTHS GETTING READY FOR SOMETHING THAT'S PROBABLY GOING
3 TO BE PRETTY SELF-EVIDENT WHEN WE GET INTO TRIAL. I'M NOT
4 SURE THAT THERE ISN'T A HIERARCHY, WE TALKED ABOUT THAT
5 THE LAST TIME, AMONG THE FACTS IN THESE VARIOUS DETAINEES'
6 CASES, AND SOME OF THEM ARE GOING TO BE SO OVERWHELMINGLY
7 NEGATIVE, FROM YOUR CLIENT'S STANDPOINT, THAT YOU ARE NOT
8 GOING TO HAVE ANY CASE, YOU ARE NOT GOING TO HAVE ANY
9 DEFENSE. YOUR DEFENSE IS GOING TO BE, WELL, SIX MONTHS
10 FROM NOW I'LL ASK FOR ANOTHER HEARING.

11 **MR. MCNAMARA:** WELL, IF THEY DON'T GIVE US THE
12 DISCOVERY THEN WE DON'T GET THE PSYCHIATRIC REPORTS AND WE
13 DON'T GET WHAT THEY ARE BASING THEIR CASE UPON.

14 **THE COURT:** YEAH, BUT YOU WILL HEAR ALL OF THAT
15 IN COURT.

16 **MR. MCNAMARA:** BUT THAT WILL BE THE FIRST TIME
17 WE HEARD IT.

18 **THE COURT:** SO WHAT.

19 **MR. MCNAMARA:** IF WE KNEW IT IN ADVANCE, IT
20 WOULD BE NICE TO GET READY FOR IT TO BE ABLE TO KNOW HOW
21 TO CROSS-EXAMINE.

22 **THE COURT:** WHAT GOOD WOULD KNOWING IT IN
23 ADVANCE DO YOU? I DON'T REALLY SEE THAT BECAUSE IT'S A
24 NON-JURY CASE. IF YOU SAY JUDGE, WE'RE SURPRISED AND
25 SHOCKED, WE HAD NO IDEA AND WE'RE NOT PREPARED TO RESPOND

1 TO THIS, GIVE ME UNTIL NEXT WEEK TO RESPOND, I MIGHT SAY
2 SURE.

3 **MR. MCNAMARA:** WELL, WE MIGHT HAVE TO SAY THAT
4 AS SOON AS THE TRIAL STARTS WHEN WE HEAR THE FIRST
5 EVIDENCE BECAUSE WE JUST WON'T -- SEE, OUR EXPERTS --

6 **THE COURT:** YEAH, BUT WE DON'T KNOW. WE'RE
7 PLANNING FOR THE FLOOD BUT IT MAY NOT RAIN.

8 **MR. MCNAMARA:** SEE, AT LEAST WITH SEEING THEIR
9 EXPERT REPORTS --

10 **THE COURT:** ARE YOU GOING TO FOLD AND SAY WOW, I
11 DIDN'T REALIZE IT WAS THIS BAD, WE'LL STIPULATE HE SHOULD
12 BE DETAINED AND PUT HIM INTO TREATMENT?

13 **MR. MCNAMARA:** WELL, NO, I DON'T THINK WE WOULD
14 DO THAT. WE WANT TO HAVE OUR EXPERTS HELP US
15 CROSS-EXAMINE THEIR EXPERTS AND MAYBE CRITIQUE AND
16 DISCREDIT THEIR EXPERTS.

17 THEY ARE GOING TO BE SAYING THAT THEY'RE SEXUALLY
18 DANGEROUS AND WE NEED WAYS TO ATTACK IT. OUR EXPERTS
19 DON'T HAVE ANYTHING TO WORK ON UNLESS WE GET THEIR
20 DISCOVERY.

21 **THE COURT:** SURE, THEY HAVE SOMETHING TO WORK
22 ON. THEY CAN LOOK AT THE MEDICAL HISTORY OF YOUR CLIENT.
23 YOU ARE ENTITLED TO THAT. THEY'RE ENTITLED TO DO A
24 FORENSIC WORK-UP ON YOUR CLIENT, JUST LIKE THE GOVERNMENT
25 HAS DONE.

1 **MR. MCNAMARA:** WE HAVEN'T EVEN RECEIVED THAT.
2 WE JUST DON'T HAVE ANYTHING ON THESE PEOPLE, OTHER THAN
3 THE CERTIFICATE OF CERTIFICATION. WE HAVE THAT, THAT'S
4 TWO PAGES SAYING SOMETHING ABOUT OUR CLIENT. WE DON'T
5 KNOW WHAT ELSE THEY ARE BASING THEIR CASE ON.

6 **THE COURT:** WELL, THE CLIENT HAS A MEDICAL
7 HISTORY IN THE BOP THAT THE CLIENT HAS ACCESS TO.

8 **MS. LITTLE:** YOUR HONOR, IF I COULD BE HEARD
9 BRIEFLY. THE CONCERN THAT WE HAVE IS THE FACT THAT WE
10 DON'T HAVE THE MENTAL HEALTH EVALUATIONS AND THE BASIS FOR
11 THE DETERMINATION WHY THIS INDIVIDUAL HAS A MENTAL DISEASE
12 OR DEFECT THAT RENDERS HIM SEXUALLY DANGEROUS OR A RISK OF
13 DANGER IF HE'S RELEASED. WE NEED THAT KIND OF MEDICAL
14 DOCUMENTATION TO GIVE TO OUR EXPERTS FOR THEM TO REVIEW AS
15 WELL AS --

16 **THE COURT:** BUT THEY WILL HAVE TO SHOW THAT. IN
17 ORDER FOR THE GOVERNMENT TO PREVAIL, THEY WILL HAVE TO
18 SHOW THAT IN OPEN COURT.

19 **MS. LITTLE:** THAT'S CORRECT. AND THEY COULD
20 POSSIBLY RUSH TO GET THOSE THINGS DONE BUT THEN WE WILL BE
21 BACK AT SQUARE ONE BECAUSE WE STILL HAVEN'T HAD OUR DAY IN
22 TRIAL FOR OUR PARTICULAR CLIENTS.

23 **THE COURT:** YEAH, BUT I WOULD HAVE HEARD IT. IN
24 ORDER FOR THE GOVERNMENT TO PREVAIL, THEY WILL HAVE TO
25 SAY, I MARK THIS AS EXHIBIT 1, THIS IS THE MEDICAL AND

1 PSYCHIATRIC HISTORY OF JOHN SMITH, I OFFER IT INTO
2 EVIDENCE. I MARK THIS AS EXHIBIT 2, THIS IS THE FORENSIC
3 EVALUATION OF HIS MENTAL HEALTH, I OFFER IT INTO EVIDENCE.
4 I CALL DR. JOHN BROWN. DR. BROWN, TAKE THE STAND. WHO
5 ARE YOU? I'M THE WORLD'S FOREMOST AUTHORITY ON SEXUAL
6 PREDATORS AND PSYCHOLOGICAL ABERRANT BEHAVIOR. WHAT DO
7 YOU KNOW ABOUT THE DETAINEE? WELL, I HAVE GONE THROUGH
8 ALL OF HIS MEDICAL HISTORY, I HAVE GONE THROUGH ALL HIS
9 PSYCHIATRIC REPORTS. IN MY OPINION, HE'S SEXUALLY
10 DANGEROUS AND SUFFERING FROM MAJOR MENTAL DISORDER. ANY
11 QUESTIONS?

12 THEN YOU SAY, MY GOSH, WE HAVE NOT SEEN ANY OF THIS,
13 THIS IS ALL SHOCKING AND NEW TO US. I SAY, GOOD, LET ME
14 READ IT AND YOU START READING IT TOO, AND WE'LL FIGURE OUT
15 WHAT QUESTIONS YOU OR I WANT TO ASK.

16 **MS. LITTLE:** BUT WE NEED TO SUBMIT AN EXPERT ON
17 OUR SIDE, AT LEAST ONE.

18 **THE COURT:** SO THEN THE GOVERNMENT RESTS AND I
19 SAY, DISMISSED, I DON'T THINK HE'S SEXUALLY DANGEROUS.
20 YOU DON'T NEED AN EXPERT BECAUSE YOU WON. I SAY DENIED.
21 YOU DON'T HAVE AN EXPERT YET? NO. OKAY, I'LL GIVE YOU 20
22 DAYS TO ACCESS YOUR EXPERT, MAIL HIM ALL OF THESE FILES
23 AND COME BACK IN 20 DAYS, AND BRING YOUR EXPERT.

24 **MR. MCNAMARA:** BUT, YOUR HONOR, OUR EXPERTS ARE
25 ALL OVER THE COUNTRY AND WE SEND THEM THIS STUFF AND THEN

1 THEY HAVE TO LOOK AT IT. THEN THEY COME TO BUTNER TO
2 INTERVIEW OUR CLIENT.

3 **THE COURT:** MAYBE YOU NEED TO FIND SOMEBODY IN
4 DURHAM AND JUST GO WITH THAT PERSON.

5 **MR. MCNAMARA:** WE HAVE NOT HAD MUCH LUCK.

6 **THE COURT:** GO TO GREENVILLE AND SEE IF YOU CAN
7 FIND SOMEBODY. SOMEBODY IS WILLING TO STAKE THEMSELVES
8 OUT AS THE WORLD'S FOREMOST AUTHORITY ON THIS.

9 **MS. LITTLE:** THE OTHER ISSUE IS, WE'RE ENTITLED
10 TO THE USE OF THE CIVIL DISCOVERY RULES AND WE DO INTEND
11 TO FLESH OUT, THROUGH USE OF INTERROGATORIES, REQUEST FOR
12 PRODUCTION, THINGS LIKE HOW WERE THESE INDIVIDUALS
13 SELECTED OUT OF THE VAST NUMBERS OF INDIVIDUALS IN THE
14 BUREAU OF PRISONS TO BE CERTIFIED.

15 **THE COURT:** BECAUSE OF THE EQUAL PROTECTION
16 ISSUE. THAT HASN'T BEEN FULLY VETTED YET.

17 **MS. LITTLE:** EXACTLY.

18 **THE COURT:** BUT YOU COULD DO THAT WHILE THESE
19 PEOPLE HAVE HEARINGS. IF THEY LOSE THE FIRST HEARING,
20 DON'T THEY HAVE THE RIGHT TO COME BACK IN SIX MONTHS AND
21 GET ANOTHER HEARING OR REQUEST ANOTHER HEARING?

22 **MS. LITTLE:** IT'S A DIFFERENT STANDARD THEN.

23 **MR. MCNAMARA:** THE BURDEN OF PROOF SHIFTS THEN.

24 **THE COURT:** OKAY. THAT'S, YOU KNOW, A
25 DISTINCTION WITHOUT A DIFFERENCE PROBABLY. IF YOU LOST,

1 THEN WHO CARES ABOUT THE BURDEN OF PROOF?

2 **MS. LITTLE:** WE THINK IT'S PRETTY CRITICAL
3 BECAUSE, AGAIN, THE BURDEN RESTS ON THE GOVERNMENT
4 INITIALLY AND WE'RE DEFENDING OUR CLIENTS. SO WE
5 BELIEVE --

6 **THE COURT:** IT'S GOING TO BE 2015 AND NO ONE
7 WILL HAVE HAD A HEARING, IF YOU FOLLOW, YOU KNOW, YOUR
8 COURSE.

9 **MS. LITTLE:** WE ANTICIPATE ACTUALLY THE SUMMER
10 WE CAN GET SOME OF THESE CASES TO TRIAL.

11 **MR. MCNAMARA:** WE HAVE EIGHT CASES IN OUR OFFICE
12 HERE TODAY, SEVEN OF THEM WE HAVE NOT SEEN ANY DISCOVERY.
13 SO THEY NEED TO GIVE US THIS STUFF. THEY HAVEN'T GIVEN IT
14 TO US YET AND THEN WE CAN, IF WE AT LEAST HAD THAT, THE
15 PROCESS WOULD GO QUICKER.

16 **MR. RENFER:** YOUR HONOR, I UNDERSTAND WHAT THE
17 COURT IS SAYING. I BELIEVE THROUGHOUT THIS PROCESS I
18 THINK THE PARTIES AND ATTORNEYS HAVE SEEN PRETTY CLEARLY
19 THAT FOR THE MOST PART THIS IS GOING TO BE A TRIAL OF
20 EXPERTS.

21 **THE COURT:** I DON'T KNOW THAT.

22 **MR. RENFER:** AND IT'S CRITICAL -- I UNDERSTAND.
23 IT IS CRITICAL FOR ANY EXPERT, OURS AS WELL AS THE
24 RESPONDENTS', TO BE ABLE TO HAVE THE COMPLETE RECORD, IF
25 YOU WILL, AS THE COURT HAS RECOGNIZED, IN ORDER TO GIVE AN

1 OPINION.

2 THE GOVERNMENT, IT HAS THE RECORDS THAT THE FORENSIC
3 PEOPLE AT BUTNER HAVE USED. BUT, IN ADDITION, THE
4 GOVERNMENT IS LIKEWISE SUBMITTING THESE RECORDS TO OUTSIDE
5 EXPERTS AS WELL. IT IS THOSE 1,500 TO UP TO 3,500 PAGES
6 OF DOCUMENTS THAT OUR PEOPLE ARE EXAMINING AND WE ARE THEN
7 TURNING OVER, UNDER RULE 26, THE REPORTS AS WELL AS ALL OF
8 THE INITIAL DISCLOSURES. IT'S BASED UPON THAT THAT THE
9 RESPONDENT IS GETTING THEIR EXPERT.

10 FROM THE STANDPOINT OF THE GOVERNMENT, WE SEE IT FAR
11 MORE -- WE BELIEVE THAT THE CASES WILL PROCEED MORE
12 EXPEDITIOUSLY BY PURSUING IT IN THAT FASHION. THAT'S THE
13 REASON THAT WE HAVE TALKED WITH COUNSEL AND OUR
14 SUGGESTING, I BELIEVE, THAT -- MR. MCNAMARA HAS SOME
15 PROPOSED IDEAS FOR SCHEDULING SOME OF THE CASES, TO GET
16 THESE CASES ON THE TRIAL CALENDAR AS QUICKLY AS POSSIBLE,
17 BUT RECOGNIZING THE NEED FOR BOTH PARTIES TO DEVELOP THEIR
18 CASES AS IN A NORMAL CIVIL CASE FOR THE EFFECTIVE ADVOCACY
19 FOR THEIR CLIENTS.

20 AGAIN, I UNDERSTAND THAT THE RESPONDENTS' ATTORNEYS
21 ARE ESPECIALLY CONCERNED ABOUT THAT IN LIGHT OF THE
22 DIFFICULTY THAT THEY HAVE HAD IN A NUMBER OF CASES WITH
23 THE -- NOT JUST THE COMMUNICATION BUT JUST THE
24 RELATIONSHIPS.

25 **THE COURT:** WELL, THEY'RE GOING TO END UP

1 GETTING FIRED IN ALL OF THE CASES AND BE STAFFED UP WITH
2 NO CLIENTS. ALL THE CLIENTS ARE GOING TO BE OUT THERE
3 WITH PANEL ATTORNEYS. I MEAN, I'M NOT ADVOCATING THAT BUT
4 THAT'S FORESEEABLE.

5 JUDGE BRITT HAS A COUPLE OF PEOPLE WHO WERE CERTIFIED
6 IN NOVEMBER OF '06, ONE NOVEMBER 2 OF '06. THIS
7 NOVEMBER 2ND IT WILL BE FIVE YEARS. I FIRST GOT AWARE OF
8 THIS AND BECAME ENGAGED IN OCTOBER OF '09, WHEN I THINK I
9 HAD MY FIRST HEARING IN COURT TO JUST DISCUSS THIS IN THE
10 *TIMMS* CASE. HE HAD ALL OF THE 4248S AND I HAD A COUPLE OF
11 HABEAS, AND THAT WAS THE ONE THAT WAS THE LEAD.

12 SO JUST IN MY OWN EXPERIENCE, PUTTING ASIDE THE OTHER
13 JUDGES ON THE COURT, ALL OF 2010, SO THAT'S A YEAR, AND
14 PART OF 2009, THAT'S ANOTHER THREE OR FOUR MONTHS AND
15 ANOTHER MONTH HERE. SO I HAVE BEEN IN THIS FOR ABOUT 16
16 OR 17 MONTHS WITH ABSOLUTELY NO TRACTION, ABSOLUTELY NOT
17 THE FIRST STEP FORWARD.

18 THIS FELLOW COMSTOCK, HE GOT CERTIFIED ON
19 NOVEMBER 2ND, SO HE'S BEEN IN IT FOUR YEARS LAST
20 NOVEMBER 2ND.

21 **MR. RENFER:** HE WAS THE FIRST ONE, YOUR HONOR.

22 **THE COURT:** YEAH, THERE'S ANOTHER ONE. ANYWAY,
23 THERE'S SEVERAL FROM NOVEMBER OF '06 AND THEY HAVE BEEN IN
24 IT FOUR YEARS LAST NOVEMBER. SO THEY'RE IN IT FOUR YEARS
25 AND CHANGE. THERE'S NO HORIZON, IT'S JUST DARKNESS.

1 **MR. MCNAMARA:** IT STRESSES ME TOO, YOUR HONOR,
2 THAT IT'S TAKEN THIS LONG BUT THERE HAVE BEEN SO MANY
3 APPEALS GOING ON THAT HAVE SLOWED IT DOWN. I DON'T KNOW
4 WHAT THE ANSWER IS AND IT DOES IRRITATE THE CLIENTS,
5 THAT'S WHY DAILY THEY ARE FINDING REASONS TO KICK US OUT.
6 THEY EVEN REPORT US TO THE BAR.

7 **THE COURT:** YOU WILL HAVE CONFLICTS OF INTEREST
8 BASED ON THEIR GRIEVANCES POSSIBLY IN EVERY CASE, FOR ALL
9 YOU KNOW, AND YOU ARE GOING TO BE IN AN ETHICAL CONUNDRUM
10 OVER WHETHER PEOPLE CAN BE FILING BAR GRIEVANCES AND
11 REQUESTS FOR DISMISSAL AND WHETHER YOU CAN CONTINUE TO
12 REPRESENT THEM AND, YOU KNOW. DO YOU BECOME STANDBY
13 COUNSEL, DO WE HAVE -- IT'S A CIVIL CASE SO THEY DON'T
14 HAVE A GIDEON RIGHT.

15 **MR. RENFER:** YOUR HONOR, ONE COMMENT, AND I DO
16 UNDERSTAND WHY THE RESPONDENTS WOULD TAKE THIS POSITION.
17 BUT WHILE THERE WAS THE POSSIBILITY, AND IN SOME CASES
18 MAYBE THE PROBABILITY, THAT THE 4TH CIRCUIT, JUDGE BRITT'S
19 DECISION AND THE 4TH CIRCUIT'S DECISION WOULD BE UPHELD,
20 AND LIKEWISE THE SAME, WHILE THERE MIGHT BE THE
21 POSSIBILITY OR PROBABILITY THAT THE *TIMMS* DECISION WOULD
22 BE UPHELD, OBVIOUSLY NONE OF THE OR VERY FEW OF THE
23 RESPONDENTS WANTED TO HAVE ANY TYPE OF HEARING GO FORWARD.

24 IT'S UNDERSTANDABLE, ALTHOUGH IT'S REGRETTABLE FROM
25 THEIR STANDPOINT THAT IT'S BEEN SO LONG BECAUSE WE

1 RECOGNIZE LIKEWISE THAT THE REAL NEED TO MOVE QUICKLY. I
2 THINK, YOUR HONOR, I GUESS WE'RE SUGGESTING THAT HAVING A
3 SCHEDULING ORDER THAT ALL PARTIES CAN LOOK AT AND THEY CAN
4 COUNT ON, THAT WILL ALLEVIATE A LOT OF THE PROBLEMS.

5 AS I SAID, WE BELIEVE THAT A SCHEDULING ORDER THAT WE
6 HAVE JOINTLY LOOKED AT FOR EACH OF THESE CASES GOING
7 FORWARD GIVES STABILITY, IT GIVES ACCOUNTABILITY AND IT
8 WILL MOVE THINGS AS EXPEDITIOUSLY AS POSSIBLE, GIVEN THE
9 REASONABLE ASSURANCE THAT THIS IS THE TIMELINE. WE WOULD
10 RECOMMEND --

11 **THE COURT:** SEE, I WANT TO START A TRIAL OR
12 TRIALS AND JUST GO WITH IT. IF I HAVE DONE SOMETHING THAT
13 IS IRREGULAR, I CAN ALWAYS GRANT A NEW TRIAL. EVERYTHING
14 THAT I DO HERE THAT'S INTERLOCUTORY IS CORRECTABLE, EVEN
15 AT THIS LEVEL. I THINK THAT THAT, TO ME, IS MORE
16 APPEALING, NO PUN INTENDED, THAN WAITING AND RELYING ON A
17 SET OF RULES THAT SEEM TO TAKE ON A LIFE EXISTENCE OF
18 THEIR OWN.

19 I MEAN, I'M READY TO START A TRIAL. I'LL LET YOU PUT
20 UP WHATEVER YOU HAVE AND HAVE THE OPPOSING SIDE PUT UP
21 WHATEVER THEY HAVE AND COME TO SOME TENTATIVE CONCLUSIONS
22 ABOUT THE PERSON. I MEAN, IF YOU ARE AFRAID THAT I'M
23 GOING TO LET EVERYBODY GO OR IF YOU ARE AFRAID THAT I'M
24 GOING TO DETAIN EVERYONE PERMANENTLY, THEN BOTH OF YOUR
25 FEARS ARE NOT REALISTIC BECAUSE I DON'T HAVE ANY

1 FOREORDAINED IDEA ABOUT IT.

2 IT'S NOT LIKE I RULED IN *TIMMS* THIS WAY AND *BRONCHEAU*
3 THIS WAY, SO THAT MEANS WHEN I HEAR THE FACTS I'M GOING TO
4 RULE FOR THE DEFENDANT OR THE GOVERNMENT. NOT AT ALL.

5 YOU NEED TO GET IN THERE AND SEE, BECAUSE I THINK THE
6 TRIAL EXPERIENCE OF PUTTING ON YOUR EVIDENCE IS GOING TO
7 GIVE MORE CLARITY TO THESE CASES AND WE'RE GOING TO BE
8 ABLE TO SEE OH, THAT'S WHAT IT'S ALL ABOUT, OKAY, NOW I
9 UNDERSTAND. OR, WHY ARE THEY DOING THIS? NOT ONLY THE
10 JUDGE BUT THE LAWYERS WILL HAVE A BETTER PERSPECTIVE ABOUT
11 THE CASES ONCE YOU GET IN THERE AND START TO TRY IT.

12 **MR. MCNAMARA:** BUT, YOUR HONOR --

13 **THE COURT:** THAT'S ALWAYS THE CASE. YOU ARE
14 BOTH LIKE ME, WE HAVE BEEN AROUND FOR A LONG TIME IN THE
15 TRIAL PRACTICE OF LAW. IF YOU THINK ABOUT IT, I THINK YOU
16 WOULD AGREE WITH ME THAT YOU KNOW MORE ABOUT THE CASE WHEN
17 YOU TRIED IT THAN YOU DO WHEN YOU JUST PREPARED IT.

18 **MR. MCNAMARA:** BUT, YOUR HONOR, I'M NOT AFRAID
19 OF WHAT YOU JUST SAID, I'M MORE AFRAID OF OUR CLIENTS
20 IMMEDIATELY WANTING TO KICK US OUT OF THE CASE.

21 **THE COURT:** WELL, I'LL BRING THE CLIENT IN AND
22 SAY, HERE'S YOUR CHOICE, I'M GOING TO START THE TRIAL NEXT
23 TUESDAY AT TEN, OR YOU CAN JUST STAY IN MARYLAND
24 INDEFINITELY AND NOBODY WILL CARE ABOUT YOU ANYMORE.

25 **MR. MCNAMARA:** WELL, THESE MEN ARE MORE

1 INTELLIGENT THAN A LOT OF THE CRIMINAL CLIENTS WE HAVE HAD
2 AND THEY STUDY THE LAW AND THEY SIT UP THERE AND THEY HAVE
3 COMPUTER ACCESS. THEY HAVE READ ALL THE DECISIONS SO FAR.
4 SO I KNOW THEY ARE GOING TO BE SO AGITATED THAT WE'RE
5 GOING TO GET A LOT OF MOTIONS.

6 IT KIND OF HURT ME THIS WEEK, PETER EBEL, WHO'S ONE
7 OF THE ONES ON FOR TODAY, WELL DARN IT IF HE DIDN'T SEND
8 ME A NASTY LETTER JUST ATTACKING ME ON EVERYTHING I DID.
9 HE TOLD ME HE WOULD REPORT ME TO THE BAR. HE SENT ME A
10 PROPOSED MOTION TO WITHDRAW THAT SOUNDED TERRIBLE. SO I
11 IMMEDIATELY FILED A MOTION TO WITHDRAW, TRYING TO BEAT HIM
12 TO IT. THAT'S GOING TO HAPPEN, I'M AFRAID ON EVERY ONE
13 OF --

14 **THE COURT:** HE'S THE MIDNIGHT RIDER, PAUL
15 REVERE? HE IS THE ONE THEY PICKED UP AT DEVENS AND PUT IN
16 THE CAR AND DROVE HIM HERE AND GAVE US A FULL ACCOUNT OF
17 HIS TRAVELS?

18 **MR. MCNAMARA:** THAT'S RIGHT. I THOUGHT THINGS
19 WERE GOING WELL WITH ME, BUT OBVIOUSLY NOT. I CAME INTO
20 WORK AFTER THE HOLIDAY TUESDAY AND FOUND THAT LETTER.

21 SO THAT'S TYPICAL OF WHAT WE'RE GOING TO SEE WITH THE
22 OTHERS. THEY ARE GOING TO KNOW WE'RE NOT READY FOR TRIAL.
23 THEY ARE NOT GOING TO UNDERSTAND YOUR PERSPECTIVE ON THIS.

24 WE DO WANT TO GET RID OF ALL OF THEM, IF WE CAN. THE
25 WORKLOAD ISSUE WOULD THEN BE SOLVED, BUT I DON'T KNOW THAT

1 WE HAVE ENOUGH PANEL ATTORNEYS TO COVER ALL OF THESE
2 CASES. SO I STILL THINK -- I WORKED WITH --

3 **THE COURT:** IS THE LEGAL MAXIM, "NO GOOD DEED
4 GOES UNPUNISHED" THE OPERATIVE RULE HERE?

5 **MR. MCNAMARA:** I DO HAVE HERE, YOUR HONOR, SOME
6 PROPOSED SCHEDULING ORDERS THAT I WORKED WITH MR. RENFER
7 ABOUT FOR EACH OF THE EIGHT CASES WE HAVE TODAY. IT CALLS
8 FOR THEM TO START WORKING ON DISCOVERY AND GET IT TO US
9 WITHIN 60 DAYS, AND THEN 60 DAYS FOR US TO GET OUR
10 EXPERTS.

11 I THINK AFTER WE HAVE THAT TIME PERIOD, YOU COULD
12 MOVE QUICKLY, EVEN THOUGH WE WON'T HAVE TIME TO DO ANY
13 DEPOSITIONS OR ANY INTERROGATORIES. WE COULD SKIP THAT
14 STAGE. SO I THINK YOU COULD PROBABLY START A TRIAL.

15 **THE COURT:** THERE'S NEVER BEEN AN INTERROGATORY
16 PROPOUNDED OR ANSWER THAT'S WORTH HAVING.

17 **MR. MCNAMARA:** THAT'S FINE.

18 **MR. RENFER:** I WOULD AGREE WITH YOU.

19 **MR. MCNAMARA:** BUT JUST TO GET THE DISCOVERY AND
20 GET OUR EXPERTS ON BOARD, OR AT LEAST HAVE ENOUGH TIME TO
21 SEE WHAT THE EVIDENCE WILL SHOW AGAINST OUR CLIENTS. WE
22 CAN HAVE TRIALS BY THE END OF THE SUMMER.

23 **MR. RENFER:** YOUR HONOR, WE WOULD ENCOURAGE THAT
24 AS WELL. WE FEEL FAIRLY STRONGLY THAT IN ORDER TO
25 ADEQUATELY REPRESENT THE UNITED STATES IN THIS, WE MUST

1 HAVE A PERIOD OF TIME TO DEVELOP INITIAL DISCLOSURES AND
2 EXPERTS. FRANKLY, NOT ON BEHALF OF THE GOVERNMENT BUT ON
3 BEHALF OF THE INTEGRITY OF THE TRIAL, WE FEEL THAT THE
4 RESPONDENTS MUST HAVE A PERIOD OF DEVELOPING THEIR INITIAL
5 DISCLOSURES AND DEVELOPING THEIR OUTSIDE EXPERT AS WELL,
6 AND WE WOULD URGE THAT ON THE COURT.

7 **THE COURT:** WELL, IF I SET TRIALS FOR FEBRUARY,
8 WHAT WOULD YOU DO, GO TO THE COURT OF APPEALS AND ASK FOR
9 A MANDAMUS STOPPING ME FROM TRYING THE CASES BECAUSE I'M
10 TOO EAGER TO DISPENSE JUSTICE? HOW WOULD YOU FRAME THAT
11 MOTION?

12 **MR. MCNAMARA:** YOUR HONOR --

13 **THE COURT:** THE COURT IS RACING TOWARD JUSTICE
14 AND WE NEED TO PUT THE BRAKES ON THIS?

15 **MR. MCNAMARA:** I'D HATE TO HAVE TO DO THAT.

16 **THE COURT:** THAT WOULD BE AN EMBARRASSING
17 MOTION. ONE OF A KIND. TRIAL TOO SOON?

18 **MR. MCNAMARA:** I WOULDN'T PERSONALLY DO THAT. I
19 WOULD LET THE TRIAL GO AHEAD AND THEN COMPLAIN, MAYBE.
20 THE FIRST WITNESS COMES ON --

21 **THE COURT:** BUT YOU WOULDN'T COMPLAIN IF YOU
22 WON, RIGHT?

23 **MR. MCNAMARA:** PARDON ME?

24 **THE COURT:** YOU CAN ONLY APPEAL IF YOU LOSE. OR
25 WOULD YOU APPEAL AFTER WINNING?

1 **MR. MCNAMARA:** NO, WE WOULDN'T APPEAL AFTER
2 WINNING.

3 **THE COURT:** JUST FOR THE HONOR?

4 **MR. MCNAMARA:** I GUESS I TRIED TO PERSUADE YOU
5 TO GIVE ME MORE TIME. THE FIRST WITNESS, THE FIRST
6 STATEMENT, I'M GOING TO HAVE TO SAY, I DIDN'T KNOW HE WAS
7 GOING TO SAY THAT.

8 **THE COURT:** NEITHER DID I. THAT'S WHAT A TRIAL
9 IS ALL ABOUT.

10 **MR. MCNAMARA:** BUT I HAVE TO CROSS-EXAMINE HIM.

11 **THE COURT:** THE PERFECT TRIAL IS WHERE NEITHER
12 SIDE TELLS EACH OTHER ANYTHING, AND THEN YOU DEVELOP IT IN
13 COURT AND YOU HAVE TO ACTUALLY THINK AND RESPOND. THAT'S
14 THE WAY TRIALS WERE FOR SEVEN, EIGHT, 900 YEARS UNTIL
15 SOMEONE INVENTED DISCOVERY.

16 I MEAN, I HAVE BEEN TOLD BY PEOPLE INFINITELY MORE
17 SKILLED THAN I WILL EVER BE THAT IF YOU ARE THE PLAINTIFF
18 AND YOU DON'T HAVE A LAY DOWN CASE THE DAY YOU FILE IT,
19 YOU SHOULDN'T FILE IT.

20 **MR. MCNAMARA:** BUT IF WE FOLLOW YOUR PROCEDURE,
21 YOUR HONOR, AND TAKE MR. EBEL AS AN EXAMPLE.

22 **THE COURT:** I WAS GOING TO TAKE MR. TIMMS
23 BECAUSE HE'S GOT A FAIRLY, WHAT'S THE RIGHT WORD, ACUTE
24 SET OF FACTS. HE DOESN'T HAVE A VERY GOOD SET OF FACTS.

25 **MR. MCNAMARA:** BUT MR. TIMMS HAS A NEW LAWYER

1 SITTING BACK THERE THAT JUST GOT INTO THE CASE LAST WEEK,
2 MR. TARLTON, AND THAT'S EVEN WORSE THAN WHAT WE HAVE.
3 HE'S ONLY HAD A WEEK SO FAR AND I DON'T THINK HE'S MET
4 MR. TIMMS YET.

5 **THE COURT:** OKAY. WELL, I MADE A LIST OF
6 FAVORITES HERE. SOME OF THE ONES THAT I WOULD THINK OF
7 TRYING FIRST ARE JOHNSON, HALL, WOODEN, EDWARDS. I MEAN,
8 I BASICALLY COMBED THROUGH THE ONES THAT ARE STILL IN THIS
9 COURT AND THOSE WOULD BE THE ONES THAT I WOULD BE
10 INTERESTED IN GOING INTO FIRST.

11 EDWARDS, WE JUST HAD HIM THE OTHER DAY AND HE'S
12 GOT -- HE HAS A REQUEST. TIMMS AND, AS I SAID, JOHNSON,
13 HALL, WOODEN.

14 **MR. MCNAMARA:** BUT, YOUR HONOR, I BET ANYTHING
15 WE'RE GOING TO HAVE EACH OF THESE MEN SITTING HERE
16 SCREAMING, MY LAWYER IS NOT READY AND HE'S LET THIS HAPPEN
17 AND I'M GOING TO CALL THE STATE BAR. WE'RE GOING TO HAVE
18 PROBLEMS.

19 **THE COURT:** I CAN DEAL WITH THAT. I CAN SAY TO
20 THEM: WELL, YOU'RE GOING TO STAY WHERE YOU ARE FOR
21 HOWEVER LONG IT TAKES TO GET YOUR COMPLAINTS IRONED OUT
22 AND IF THAT'S YOUR ELECTION, IF YOU ELECT TO DO THAT, THEN
23 I CAN'T PROTECT YOU FROM YOURSELF, SO BACK YOU GO.

24 **MR. CRAVEN:** JUDGE, YOU MENTIONED JOHNSON AS THE
25 FIRST ONE ON YOUR SHORT LIST THERE.

1 **THE COURT:** YES.

2 **MR. CRAVEN:** I REPRESENT HIM.

3 **THE COURT:** IN THE 4248?

4 **MR. CRAVEN:** YES, SIR. I LIKE MOST OF WHAT YOU
5 HAD TO SAY AT THIS POINT.

6 **THE COURT:** SHOULD I FEEL COMFORT IN THAT?

7 **MR. CRAVEN:** I, TOO, WANT TO MOVE IT ALONG AND I
8 THINK A MINIMAL TIME, IF AT ALL, ON DEPOSITIONS AND
9 INTERROGATORIES WOULD BE ALL THAT'S NEEDED. I'M PERFECTLY
10 WILLING TO MAKE, AS MR. MCNAMARA INDICATED, TO ESSENTIALLY
11 SKIP THAT STAGE.

12 **THE COURT:** SO IT'S FORESEEABLE THE OUTCOME WILL
13 BE THAT THEY WILL FILE A GRIEVANCE AGAINST BOTH OF US AND
14 WE'LL BOTH BE OUT OF THE CASE?

15 **MR. CRAVEN:** WELL, PETER EBEL, HE ALSO
16 COMPLAINED THAT I HAVE SPOKEN UP IN MR. MCNAMARA'S
17 DEFENSE. I TOLD EBEL THAT HE OUGHT TO BE THANKFUL THAT HE
18 HAD TOM MCNAMARA REPRESENTING HIM. SO NOW EBEL THINKS --

19 **THE COURT:** YOU ARE IN CAHOOTS WITH THE PUBLIC
20 DEFENDER?

21 **MR. MCNAMARA:** HE'S GOING TO REPORT HIM TO THE
22 BAR FOR RECOMMENDING ME.

23 **THE COURT:** GUILT BY ASSOCIATION. VICARIOUS
24 LIABILITY IN FEDERAL COURT.

25 **MR. CRAVEN:** ON *JOHNSON*, I'M WILLING TO SKIP THE

1 DEPOSITION.

2 **THE COURT:** YOU ARE WILLING TO GO TO LIGHT SPEED
3 ON THIS, RIGHT?

4 **MR. CRAVEN:** I DON'T HAVE THE DISCOVERY YET.

5 **THE COURT:** BUT YOU ARE NOT GOING TO GET IT. NO
6 ONE IS GOING TO GET DISCOVERY. THAT'S AN ILLUSION.

7 **MR. CRAVEN:** I DON'T KNOW WHAT THEIR PROBLEM IS
8 WITH HIM. ALL I HAVE IS THE BALD CERTIFICATION.

9 **THE COURT:** WELL, YOU HAVE YOUR CLIENT. YOU'VE
10 GOT YOUR CLIENT. THEY HAVE THE DISCOVERY BUT YOU HAVE
11 YOUR CLIENT; YOU CAN TALK TO YOUR CLIENT.

12 **MR. CRAVEN:** THAT'S TRUE, AND I'M GOING TO MEET
13 WITH HIM ON TUESDAY. AS SOON AS THEY GIVE ME THE
14 DISCOVERY -- AND MUCH OF THE DISCOVERY, I MIGHT ADD, I
15 TOOK 1,600 PAGES OF IT IN ANOTHER CASE HOME THE OTHER
16 NIGHT AND LOOKED THROUGH IT. I FOUND FOUR PAGES ON THE
17 FACT THAT THIS GUY HAD WAX STUCK IN HIS EAR. WELL, I'M
18 NOT INTERESTED IN THAT, NEITHER ARE YOU.

19 **THE COURT:** RIGHT.

20 **MR. CRAVEN:** THERE'S AN AWFUL LOT IN THE
21 DISCOVERY MATERIAL THAT WE DON'T NEED. I DON'T CARE ABOUT
22 WHETHER HE'S GETTING VITAMIN B12 SHOTS OR NOT. BUT IF
23 THEY WOULD GIVE US THE GIST OF THE DISCOVERY, THE
24 SUBSTANTIVE DISCOVERY, SO TO SPEAK, THE FORENSIC AND
25 PSYCHIATRIC STUFF ON JOHNSON, I WILL BE READY IN 60 DAYS.

1 I JUST WANTED TO SPEAK UP BECAUSE YOU WERE MENTIONING
2 JOHNSON.

3 **THE COURT:** JOHNSON IS A D. C. CO-DEFENDER, SO
4 HE DOESN'T HAVE SUPERVISED RELEASE.

5 **MR. CRAVEN:** NO. HE'S A D. C. PAROLE VIOLATOR.

6 **THE COURT:** SO HE COULDN'T FIT INTO MY SHOEHORN
7 OF *BRONCHEAU* BECAUSE THERE'S NOTHING TO PUT HIM OUT ON.

8 **MR. CRAVEN:** NO. I TRIED *BRONCHEAU* ON HIM AND
9 IT WAS NOT A GOOD FIT.

10 **THE COURT:** IT DOESN'T WORK BECAUSE HE DOESN'T
11 HAVE REMAINING SUPERVISION.

12 **MR. CRAVEN:** A NUMBER OF US ARE PULLING FOR
13 *BRONCHEAU*.

14 **THE COURT:** COVER YOUR BET.

15 **MR. CRAVEN:** BUT WE CAN BE READY IN JOHNSON'S
16 CASE FAIRLY QUICKLY IF THEY WILL GIVE US THE SUBSTANTIVE
17 DISCOVERY. THE MORE THEY LEAVE OUT ABOUT HIS RUNNY NOSE
18 AND EAR WAX, THAT WILL SAVE TIME, TOO.

19 **THE COURT:** YEAH. HE HAS A CHARGE OF SEXUALLY
20 ASSAULTING AN EIGHT YEAR OLD GIRL AND HE HAD A CONVICTION
21 OF ASSAULT WITH INTENT TO RAPE AND A SMALL TERM FOR
22 ASSAULT WITH INTENT TO KIDNAP. AS I SAID, HE'S A D.C.
23 CO-OFFENDER AND HE MIGHT BE A GOOD ONE TO START WITH.

24 **MR. CRAVEN:** WELL, HE MIGHT BE. I CAN'T
25 REMEMBER IF YOU HAVE RANDALL COOK OR NOT.

1 **THE COURT:** COOK IS NOT ONE OF THE ONES THAT IS
2 OPEN.

3 **MR. CRAVEN:** I CAN'T KEEP ALL THESE CASES
4 STRAIGHT IN MY MIND SOMETIMES.

5 **THE COURT:** TODAY IS THE 20TH. I MEAN, THIS IS
6 AGAINST MY BETTER JUDGMENT, BUT OUT OF DEFERENCE I'M
7 WILLING TO SET IT FOR MARCH 21, FOR THE BEGINNING OF THE
8 TRIAL. WE CAN JUST PLAN TO START THE TRIAL ON THE 21ST
9 AND HAVE HIM HERE.

10 **MR. CRAVEN:** THAT WON'T WORK IF THEY GIVE ME THE
11 DISCOVERY MATERIAL ON THE 19TH. I NEED MORE INFORMATION
12 ABOUT HIM THAN I HAVE FROM THE GOVERNMENT.

13 **THE COURT:** OKAY.

14 **MR. CRAVEN:** AND THEN I NEED TO --

15 **THE COURT:** HAVE YOU GOTTEN ANYTHING?

16 **MR. CRAVEN:** JUDGE, I DON'T BELIEVE I HAVE. I
17 DON'T BELIEVE I HAVE IN THIS CASE. I GOT THE FILE FROM
18 HART MILES, MY PREDECESSOR, BUT NO, I DON'T HAVE ANY
19 DISCOVERY MATERIAL YET FROM THE GOVERNMENT.

20 **THE COURT:** ALL RIGHT. WELL, LET'S HAVE A
21 PRETRIAL CONFERENCE THEN RIGHT NOW AND I'D ASK THE
22 GOVERNMENT TO GIVE HIM EVERYTHING YOU EXPECT TO OFFER BY
23 FEBRUARY 11 AND THEN WE'LL BE READY FOR TRIAL BY MARCH 21.

24 WE'LL TAKE A BRIEF RECESS.

25 (RECESS TAKEN.)

1 **THE COURT:** MR. RENFER, ISN'T IT TRUE THAT WHEN
2 YOU CERTIFY SOMEBODY, THE POINT AT WHICH THEY WERE GOING
3 TO BE PUT INTO THIS PROGRAM, THAT THERE WAS SOME PACKET OF
4 MATERIAL THAT THE REVIEWER RELIED ON IN ORDER TO MAKE THE
5 CERTIFICATION?

6 **MR. RENFER:** I'M NOT SURE IF IT'S A PACKET OF
7 MATERIAL, BUT THE MEDICAL RECORDS, THE PSYCHOLOGICAL
8 RECORDS, ET CETERA, AS WELL AS NOT JUST THAT BUT THE
9 CRIMINAL RECORD AND BOP'S INTERNAL ACTIVITY RECORDS, ALL
10 OF THAT WAS REVIEWED, YES.

11 **THE COURT:** CAN'T WE GET THAT DISCRETE
12 INFORMATION AND PROVIDE IT TO THE LAWYER TO START THE BALL
13 ROLLING?

14 **MR. RENFER:** YOUR HONOR, WHEN WE WERE FIRST
15 DEVELOPING THIS, THE FEDERAL PUBLIC DEFENDER'S OFFICE WAS
16 VERY CONCERNED ABOUT GETTING ALL OF THE MATERIAL THAT
17 MIGHT BE AVAILABLE, AND WE ASSURED THEM THAT WE WOULD
18 PROVIDE ALL OF IT. IN FACT, YOUR HONOR, WE CAN PROVIDE
19 ALL OF THE MATERIAL TO THEM, EVEN THOUGH MR. CRAVEN WAS
20 KIND OF TALKING ABOUT OTHER MEDICAL RECORDS THAT HE DIDN'T
21 CARE ABOUT, IT'S JUST AS EASY TO PROVIDE ALL OF IT AS IT
22 IS FOR US TO TRY TO WEED OUT DISCRETE ITEMS.

23 IF OUR EXPERT IS CROSS-EXAMINED AND SAID, YOU KNOW,
24 WHAT ALL DID YOU LOOK AT, AND GIVES THIS MATERIAL THAT, IN
25 FACT, WE HAD NOT INCLUDED, WE HAVE PROBLEMS. SO IT'S JUST

1 AS EASY FOR US TO GIVE THEM THE COMPLETE UNIVERSE OF
2 MATERIALS. AND, FRANKLY, WE CAN DO IT IN JUST THE SAME
3 AMOUNT OF TIME.

4 **THE COURT:** ALL RIGHT. WELL, WHAT'S HOLDING
5 THAT BACK?

6 **MR. RENFER:** WELL, FRANKLY, YOUR HONOR, WHAT'S
7 HOLDING IT BACK WAS, AS I INDICATED EARLIER, THE MANY,
8 MANY RESPONDENTS, AND MOST OF THE RESPONDENTS DID NOT WANT
9 TO GO FORWARD WITH DEVELOPING A HEARING WHILE THERE WAS A
10 CHANCE OR PROBABILITY CONCERNING THE APPELLATE CASES.
11 ONLY AFTER *COMSTOCK 2* AND *TIMMS* WAS DECIDED, HAVE THE
12 RESPONDENTS SAID OKAY, WE'RE GOING TO HAVE TO HAVE
13 HEARINGS. SO WE HAVE, AT THAT POINT, STARTED ON
14 DEVELOPING THESE.

15 IN FACT, THE FIRST 15 -- DURING THE APPELLATE
16 PROCESS, THERE WERE A NUMBER THAT DID REQUEST HEARINGS,
17 ABOUT 15 OR 16, AND WE HAVE DEVELOPED ALL OF THOSE RECORDS
18 AND HAVE DELIVERED THOSE TO OPPOSING COUNSEL. NOW, WE
19 HAVE ALSO STARTED ON DEVELOPING THE OTHERS BEYOND THE 15,
20 AND WE WILL BE CONTINUING TO DO THAT.

21 WHAT WE NEED FROM THE COURT AND THE COURTS IS SOME
22 GUIDANCE BECAUSE THERE ARE BASICALLY, EXCEPT FOR THE 12
23 PLUS 15, SO BASICALLY THERE'S ANOTHER 60 OR 65. FOR
24 INSTANCE, IF THE COURT WANTED JOHNSON TO GO FORWARD, WE
25 WOULD IMMEDIATELY START ON THAT.

1 **THE COURT:** OKAY.

2 **MR. RENFER:** IF THE COURT WOULD PICK ANOTHER
3 ONE, WE WOULD START ON THAT.

4 **THE COURT:** OKAY. I'LL DO THAT. I DON'T HAVE
5 ANY EXPECTATION ABOUT THE CASES THAT THE OTHER JUDGES
6 HAVE. THAT'S THEIR BUSINESS. I'M NOT GOING TO CRITIQUE
7 IT OR SUPPORT IT.

8 **MR. RENFER:** SURE.

9 **THE COURT:** BUT I WOULD LIKE TO HAVE THE
10 DISCOVERY THAT YOU JUST TALKED ABOUT PROVIDED IN *EDWARDS*,
11 IN *JOHNSON*, IN *HALL*, IN *WOODEN*, AND *TIMMS*. THOSE ARE FIVE
12 CASES. YOU CAN REALISTICALLY EXPECT THAT THEY'LL JUMP TO
13 THE HEAD OF THE LIST BECAUSE IT'S MORE LIKELY, GIVEN MY
14 HISTORY IN THE PAST 16 MONTHS -- YOU HAVEN'T YET TALKED TO
15 A DISTRICT JUDGE OTHER THAN *COMSTOCK*, HAVE YOU?

16 **MR. RENFER:** I DON'T QUITE UNDERSTAND THE
17 QUESTION.

18 **THE COURT:** YOU HAVEN'T HAD A HEARING WITH A
19 U.S. DISTRICT JUDGE OTHER THAN ME?

20 **MR. RENFER:** NO, THAT'S CORRECT.

21 **THE COURT:** THAT'S WHAT I THOUGHT. THAT'S FINE,
22 BUT I'M JUST TELLING YOU THAT IRRESPECTIVE OF WHAT GOES ON
23 IN THE OTHER 90 CASES, MINE ARE PROBABLY GOING TO BE THE
24 SQUEAKY WHEEL BECAUSE I'M THE ONLY DISTRICT JUDGE WHO'S
25 HAVING ISSUES WITH IT AND PUSHING IT.

1 **MR. RENFER:** YOUR HONOR, IF I MIGHT, THOSE ARE
2 FIVE CASES, OKAY. WE WOULD ASK THAT YOU STAGGER SOMEWHAT
3 THESE BECAUSE WE WOULD NEED TO -- IF WE CAN NOT DO IT,
4 YOUR HONOR, WE WOULD NEED TO FILE A MOTION TO CONTINUE.

5 **THE COURT:** ALL RIGHT. LET'S GIVE THEM A
6 HIERARCHY THEN. I'LL GIVE YOU ONE TO FIVE. JOHNSON,
7 NUMBER ONE; EDWARDS, NUMBER TWO; TIMMS, NUMBER THREE;
8 HALL, NUMBER FOUR; AND WOODEN, NUMBER FIVE. JUST
9 INTERNALLY PROCEED ACCORDINGLY. IF NUMBER FIVE IS QUICKER
10 FOR YOU TO DO WHEN YOU LOOK AT IT, THEN DO FIVE AND, YOU
11 KNOW --

12 **MR. RENFER:** WELL, YOUR HONOR, ACTUALLY EDWARDS
13 IS NUMBER TWO BUT EDWARDS IS ALREADY DONE, FROM OUR
14 STANDPOINT.

15 **THE COURT:** ALL RIGHT. YOU'RE IN GOOD SHAPE.

16 **MR. RENFER:** WHAT I'M SAYING IS, WE WILL DO
17 THESE AS EXPEDITIOUSLY AS POSSIBLE. I DON'T KNOW IF THE
18 COURT WANTS A TIMELINE ON IT, BUT WE WILL START ON THESE.
19 I CAN SAY PROBABLY WE COULD GET, WITH EDWARDS OUT OF THE
20 WAY, THAT WOULD LEAVE FOUR OF THEM. WE COULD PROBABLY
21 GET -- JOHNSON, I DON'T BELIEVE -- I THINK WE WOULD NEED
22 45 DAYS ON JOHNSON, YOUR HONOR. MR. TIMMS, WE CAN DO IN
23 30 DAYS. HALL, I DON'T KNOW ABOUT HALL OR WOODEN, YOUR
24 HONOR. I'D HAVE TO GET BACK WITH YOU.

25 **THE COURT:** LET'S COME BACK ON FEBRUARY 11 AT 11

1 O'CLOCK AND SEE WHERE WE ARE ON THESE FIVE.

2 **MR. RENFER:** FEBRUARY 11. THAT'S FINE, YOUR
3 HONOR. THAT WILL BE GREAT.

4 I APPRECIATE THE FACT THAT THE COURT IS NOT PUTTING,
5 AT THIS POINT, PUTTING A DEADLINE ON US. WE WILL BE ABLE
6 TO REPORT TO YOU WHAT WE CAN DO AND WE WILL DO IT AS
7 EXPEDITIOUSLY AS POSSIBLE.

8 THE COURT, I KNOW, UNDERSTANDS THAT WE WILL ALSO BE
9 DEVELOPING INITIAL DISCLOSURES ON MULTIPLE OTHER CASES FOR
10 THE OTHER JUDGES. OBVIOUSLY THAT COMES BACK TO THE
11 RESOURCES THAT THE BUREAU OF PRISONS HAS TO DEVOTE TO
12 THESE.

13 **THE COURT:** YEAH. BUT I BELIEVE, AND I'M GOING
14 TO TELL YOU THAT I'M GOING TO SET TRIAL DATES, AND I
15 BELIEVE THAT BY GETTING LIVE IN COURT WITH THE TWO LAWYERS
16 AND WHOEVER THE WITNESS WANTS TO BE, WE'RE GOING TO MOVE
17 THESE CASES ALONG.

18 SO YOU ARE GOING TO HAVE EITHER PEOPLE COMMITTED OR
19 PEOPLE RELEASED; EITHER RELEASED BECAUSE YOU AGREE TO
20 RELEASE THEM OR COMMITTED BECAUSE I COMMIT THEM. AND THEN
21 YOU ARE GOING TO HAVE LESS AND LESS, IS WHAT I'M TRYING TO
22 SAY. AS YOU STRIKE NAMES OFF THE LIST, YOU ARE GOING TO
23 HAVE AN EASIER TIME OF IT. IF WE COULD GET FIVE MOVED AND
24 OFF YOUR LIST, THEN YOU WOULD BE DOWN INTO THE 80S, AND
25 THEN GET ANOTHER FIVE, YOU WILL BE CLOSER TO 80.

1 **MR. RENFER:** SURE. THE COURT NEEDS TO -- I
2 WOULD JUST SUGGEST TO THE COURT, THAT OBVIOUSLY WE WILL
3 TRY TO ADHERE TO THE TRIAL SCHEDULE THAT THE COURT SETS.
4 IF WE SEE THAT WE ARE NOT ABLE TO DEVELOP OUR CASE
5 ADEQUATELY, OBVIOUSLY WE WOULD NEED TO MAKE A MOTION TO
6 CONTINUE, WHICH WE WOULD PRESENT TO THE COURT AT THE
7 APPROPRIATE TIME.

8 **THE COURT:** YEAH. I HAVE A HIGH LEVEL OF BELIEF
9 THAT DOING THEM WILL MAKE THEM SO MUCH MORE UNDERSTANDABLE
10 AND THE SOONER WE GET INTO HEARING THE CASES THE BETTER IT
11 IS. I'M REALLY READY TO GO WITH THEM.

12 **MR. RENFER:** ONE LAST THING. I DON'T MEAN TO
13 INJECT MYSELF LIKE THAT TO THE COURT, BUT IN LOOKING AT
14 THE 11 CASES, MANY OF THEM HAVE 2241'S THAT ARE STILL
15 PENDING BEFORE THIS COURT AS WELL AS MANY HAVE VARIOUS
16 MOTIONS. AGAIN, WE RECOGNIZE THAT MOTIONS TO DISMISS NEED
17 NOT LEGALLY BE DECIDED BEFORE A TRIAL OF THE CASE BUT IT
18 MIGHT PERHAPS CLARIFY SOME ISSUES IF THOSE WERE DECIDED --

19 **THE COURT:** I'M GOING TO RESOLVE THE MOTIONS
20 THAT ARE IN CASES THAT ARE IN FRONT OF ME THAT ARE
21 CONTROLLED BY EITHER *COMSTOCK* OR *TIMMS*. I'M NOT, AT THIS
22 POINT, GOING TO DISMISS MOTIONS THAT ARE BASED ON EQUAL
23 PROTECTION GROUNDS AND SELECTIVITY, BECAUSE I DIDN'T RULE
24 ON THAT YET.

25 WHAT WAS THE OTHER THING THAT YOU SAID, NOT ONLY THE

1 MOTION TO DISMISS BUT --

2 MR. RENFER: IN THE 2241'S.

3 THE COURT: OH, THE 2241'S. I THINK *TIMMS* MOOTS
4 ALL OF THOSE.

5 MR. RENFER: I THINK SO TOO, YOUR HONOR, BUT
6 THERE ARE PENDING MOTIONS.

7 THE COURT: IF YOU HAVE A 4248 AND A 2241, YOU
8 HAVE TO DO THE 4248 FIRST.

9 MR. RENFER: THERE ARE SIX OF YOUR CASES, I
10 BELIEVE, THAT HAVE 2241'S PENDING.

11 THE COURT: YOU WON'T HAVE TO RESPOND TO THAT
12 PART OF THE CASE.

13 MR. RENFER: ACTUALLY, THE MOTIONS ARE THERE AND
14 WE HAVE FILED A MOTION TO DISMISS, SO THEY ARE READY FOR
15 YOUR RULING ON THOSE.

16 THE COURT: I THINK THEY WILL BE DISMISSED
17 WITHOUT PREJUDICE.

18 MR. RENFER: OF COURSE, YES. OKAY.

19 THE COURT: ALL RIGHT. ARE THERE LAWYERS HERE
20 IN ANY OF THE CASES THAT WANT TO BE HEARD WHO ARE IN THE
21 4248 CASES THAT REPRESENT OTHER DEFENDANTS?

22 LET'S SEE, MAYS. WHO REPRESENTS MAYS? YOU-ALL DO.

23 MS. LITTLE: YOUR HONOR, WE DO.

24 THE COURT: AND MR. ROSS REPRESENTS EDWARDS AND
25 TIMMS IS MR. TARLTON?

1 **MR. TARLTON:** YES, YOUR HONOR. I REPRESENT HIM.
2 I FILED MY NOTICE OF APPEARANCE ON JANUARY 15. I'M
3 ARRANGING AN INTERVIEW WITH MR. TIMMS, PLANNING ON FILING
4 A MOTION FOR HEARING.

5 **THE COURT:** OKAY. THANK YOU. HEYER?

6 **MR. MCNAMARA:** I HAVE HIM, YOUR HONOR.

7 **THE COURT:** JOHNSON.

8 **MR. CRAVEN:** I HAVE ANTON JOHNSON, YOUR HONOR.

9 **THE COURT:** HALL? THE PUBLIC DEFENDER HAS HALL?

10 **MR. ROSS:** I HAVE HALL.

11 **THE COURT:** FRANCIS?

12 **MR. HAWES:** I HAVE HIM, YOUR HONOR.

13 **THE COURT:** WHO ARE YOU?

14 **MR. HAWES:** JIM HAWES.

15 **MR. CRAVEN:** HE REPRESENTS MR. FRANCIS, YOUR
16 HONOR, IN THE 4248 CASE AND I HAVE HIM IN THE COMPANION
17 HABEAS CASE.

18 **THE COURT:** OKAY. HAVE YOU FILED ANYTHING IN
19 THAT CASE, MR. HAWES?

20 **MR. HAWES:** SINCE OUR LAST STATUS CONFERENCE?

21 **THE COURT:** H-A-W-E-S IS YOUR NAME.

22 **MR. HAWES:** CORRECT.

23 **THE COURT:** WHERE DOES YOUR CASE STAND?

24 **MR. HAWES:** WE MAY BE ASKING FOR A HEARING. I
25 WANT TO MEET WITH HIM ONE MORE TIME.

1 **THE COURT:** HOW LONG HAS HE --

2 **MR. CRAVEN:** HE WAS CERTIFIED IN FEBRUARY OF --
3 I'M SORRY, JANUARY 29 LAST YEAR, YOUR HONOR. ALMOST A
4 YEAR AGO.

5 **THE COURT:** SEAN FRANCIS?

6 **MR. CRAVEN:** YES, SIR.

7 **THE COURT:** AND MR. HAWES, YOU ARE HIS 4248
8 LAWYER, RIGHT?

9 **MR. HAWES:** CORRECT.

10 **THE COURT:** OKAY.

11 **MR. CRAVEN:** I REPRESENT HIM IN THE HABEAS CASE.

12 **THE COURT:** YEAH.

13 **MR. CRAVEN:** HIS CASE IS IDENTICAL TO *BRONCHEAU*.

14 **THE COURT:** YEAH. DO YOU KNOW MUCH ABOUT HIM,
15 MR. HAWES?

16 **MR. HAWES:** YES.

17 **THE COURT:** HE HAS A PRIOR CONVICTION AND EIGHT
18 COUNTS OF MAKING THREATS. WHAT WAS THAT ALL ABOUT?

19 **MR. HAWES:** WHAT HE PLED TO WAS NOT SEXUAL IN
20 NATURE. THE THREATS THEMSELVES --

21 **THE COURT:** THREATS TO WHAT?

22 **MR. HAWES:** THE THREATS THEMSELVES MAY HAVE BEEN
23 SEXUAL IN NATURE. WHAT HE PLED TO WAS NOT SEXUAL IN
24 NATURE.

25 **THE COURT:** WHAT WAS IT?

1 **MR. HAWES:** WHAT DID HE DO?

2 **THE COURT:** WHAT DID HE PLEAD TO?

3 **MR. HAWES:** HE PLED TO MAKING THREATS.

4 **THE COURT:** WHAT KIND OF THREATS?

5 **MR. HAWES:** WHAT HE PLED TO IS JUST MAKING
6 THREATS BUT THE THREATS WERE CALLING WOMEN MILES AWAY,
7 THOUSANDS OF MILES AWAY, SAYING THAT HE WAS GOING TO DO
8 VARIOUS THINGS TO THEM BUT NEVER ACTUALLY DOING IT,
9 THOUGH.

10 **MR. CRAVEN:** HE'S ONE OF THE ONES, YOUR HONOR,
11 THAT WE TALKED ABOUT LAST TIME WHO WAS CERTIFIED BY THE
12 SPECIALIST IN BARIATRIC SURGERY.

13 **THE COURT:** YEAH. HE HAD A 70-MONTH TERM. WAS
14 THAT ON THE INTIMIDATION OF THE WITNESSES OR EXTORTION OR
15 THREATS?

16 **MR. HAWES:** I BELIEVE THAT WAS JUST THREATS.

17 **THE COURT:** HUH?

18 **MR. HAWES:** I BELIEVE THAT WAS JUST ON THE
19 THREATS.

20 **THE COURT:** DOES HE HAVE A CRIME THAT HE WAS
21 CONVICTED AND SENTENCED FOR IN FEDERAL COURT THAT WAS
22 ANTECEDENT TO HIS CERTIFICATION, THE OTHER THINGS PRIOR IN
23 TIME OR DOES HE JUST HAVE THAT ONE THING? I'M TRYING TO
24 GET FROM YOU THAT INFORMATION.

25 **MR. HAWES:** I BELIEVE IT'S JUST THE THREATS. IS

1 THAT RIGHT, MR. CRAVEN?

2 MR. CRAVEN: YOUR HONOR, HIS ORIGINAL SENTENCE
3 WAS 70-MONTHS FOR INTIMIDATION OF WITNESSES AND ONE COUNT
4 OF EXTORTION.

5 THE COURT: YEAH. BUT HE HAD A PRIOR CRIME OF
6 MAKING THREATS; IS THAT RIGHT?

7 MR. CRAVEN: YEAH, HE DID. HE HAD ONE IN THE
8 SOUTHERN DISTRICT OF NEW YORK THE ONE IN THE EASTERN
9 DISTRICT OF KENTUCKY.

10 THE COURT: RIGHT.

11 MR. CRAVEN: WHAT HE WOULD DO IS GET DRUNK AND
12 GET ON THE PHONE AND MAKE THREATENING PHONE CALLS OF A
13 SEXUAL NATURE.

14 THE COURT: YEAH. AND HAVE YOU DONE ANYTHING TO
15 GET INVOLVED IN THE CASE? HE SEEMED TO HAVE ONE OF THE
16 MORE ATTENUATED SET OF FACTS, IN TERMS OF HIS
17 CERTIFICATION.

18 MR. HAWES: WELL, I MET WITH HIM AND THEN WE
19 FILED THE MOTION TO DISMISS.

20 THE COURT: ON WHAT GROUNDS?

21 MR. HAWES: ON *BRONCHEAU* FACTS.

22 THE COURT: YEAH. AND THAT WASN'T RULED ON?

23 MR. HAWES: CORRECT.

24 THE COURT: HE HAS A SUPERVISED RELEASE TERM, IN
25 OTHER WORDS?

1 **MR. HAWES:** RIGHT.

2 **MR. CRAVEN:** HE DOES.

3 **THE COURT:** THE REASON FOR NOT RULING ON IT WAS
4 THAT I DIDN'T WANT TO CLUTTER UP THE CASES IN THE COURT OF
5 APPEALS WHEN IT LOOKS LIKE THEY'RE GOING TO HAVE TO BE
6 RESOLVED HERE.

7 **MR. HAWES:** I THINK WE WILL BE REQUESTING A
8 HEARING VERY SHORTLY.

9 **THE COURT:** YOU ARE STILL IN THIS COURT?

10 **MR. HAWES:** RIGHT.

11 **THE COURT:** YOU ARE NOT IN THE COURT OF APPEALS?

12 **MR. HAWES:** CORRECT.

13 **THE COURT:** OKAY. WHAT'S HOLDING YOU BACK FROM
14 REQUESTING A HEARING?

15 **MR. HAWES:** I WAS JUST GOING TO MEET WITH HIM
16 ONE MORE TIME TO MAKE SURE THAT'S WHAT HE WANTED TO DO.

17 **THE COURT:** HIS OTHER CHOICE IS TO JUST
18 STIPULATE THAT HE'S A VALID CERTIFICATION AND GO AHEAD AND
19 DISMISS HIS CASE, HAVE AN ENTRY OF AN ORDER FINDING THAT
20 HE'S SUBJECT TO THE 4248 DETENTION.

21 **MR. HAWES:** I UNDERSTAND THAT.

22 **THE COURT:** IF YOU WANT TO DO THAT, THAT'S FINE.

23 **MR. CRAVEN:** NO, WE WILL NOT BE DOING THAT. NO.

24 **THE COURT:** WHAT'S THAT DO, WIPE OUT YOUR 2241?

25 **MR. CRAVEN:** I'M NOT SO MUCH CONCERNED ABOUT THE

1 2241 BY ITSELF, IN THAT SUCCESS IN EITHER CASE WILL
2 ACCOMPLISH WHAT WE WANT.

3 **THE COURT:** YOU WILL NOT GET TO THE 2241 UNTIL
4 THE 4248 IS OVER AND FINAL ORDER IS IN.

5 **MR. CRAVEN:** I THINK BECAUSE OF *TIMMS* YOU HAVE A
6 POINT THERE.

7 **THE COURT:** YEAH. RIGHT.

8 **MR. CRAVEN:** BUT, AGAIN, YOU KNOW, SO FAR
9 *BRONCHEAU* LIVES.

10 **THE COURT:** WELL, OKAY.

11 **MR. CRAVEN:** BUT THEN THEY RELEASE OPINIONS
12 EVERY AFTERNOON, SO WHO KNOWS.

13 **THE COURT:** YEAH. BUT IF THE TWO OF YOU LOOK AT
14 IT, IF YOU ARE COLLABORATING --

15 **MR. CRAVEN:** WE ARE.

16 **THE COURT:** -- IT'S ONE OF THE MORE ATTENUATED
17 SET OF FACTS. HAVE YOU GOTTEN ANY MEDICAL, PSYCHIATRIC
18 DISCOVERY ON THE CASE?

19 **MR. CRAVEN:** YOUR HONOR, WE HAVE GOTTEN WHAT WE
20 HAVE BEEN ABLE TO GET FROM THE COURTS IN NEW YORK AND
21 KENTUCKY AND FROM PRIOR COUNSEL. WE DO NOT YET HAVE THE
22 GOVERNMENT'S DISCOVERY.

23 **THE COURT:** DO YOU KNOW OFF HAND WHETHER FOIA
24 APPLIES IF PRISONERS -- THEY DON'T HAVE FOIA RIGHTS?

25 **MR. CRAVEN:** NO, THEY DO. BUT, IN TRUTH, I

1 CAN'T GET THE RECORDS FROM BUTNER ANY QUICKER THAN
2 MR. RENFER CAN. I THINK, YOU KNOW, FRANKLY, I THINK THEY
3 ARE PROBABLY SLOW TO RESPOND TO EITHER ONE OF US.

4 **THE COURT:** YOU COULDN'T FILE A FREEDOM OF
5 INFORMATION ACT REQUEST TO GET YOUR MEDICAL RECORDS IF YOU
6 WERE AN INMATE?

7 **MR. CRAVEN:** YES, BUT I THINK THAT WOULD SLOW
8 THE PROCESS DOWN, FRANKLY.

9 **THE COURT:** OKAY.

10 **MR. CRAVEN:** I'M CONFIDENT THE GOVERNMENT CAN
11 GET THIS MATERIAL QUICKER THAN WE CAN.

12 **THE COURT:** OKAY.

13 **MR. CRAVEN:** THAT SAID, WE'RE READY TO RECEIVE
14 IT.

15 **THE COURT:** WHO'S IN THE OFARRIT-FIGUEROA CASE?

16 **MR. MCNAMARA:** THAT'S ONE OF MINE, YOUR HONOR.

17 **THE COURT:** WHO'S IN WOODEN?

18 **MR. ROSS:** I AM.

19 **THE COURT:** WHO'S IN SULLIVAN?

20 **MS. PEARCE:** WE ARE, YOUR HONOR.

21 **THE COURT:** OKAY, THE PUBLIC DEFENDER. WELL,
22 I'M FINISHED WITH WHAT I HAD TO SAY. ANYBODY ELSE WANT TO
23 ADD TO IT? OKAY. ALL RIGHT, THANK YOU.

24 WE'LL RESUME ON THE 11TH OF FEBRUARY.

25 END OF TRANSCRIPT

1 CERTIFICATE

2 THIS IS TO CERTIFY THAT THE FOREGOING TRANSCRIPT OF
3 PROCEEDINGS TAKEN AT THE CIVIL SESSION OF UNITED STATES
4 DISTRICT COURT IS A TRUE AND ACCURATE TRANSCRIPTION OF THE
5 PROCEEDINGS TAKEN BY ME IN MACHINE SHORTHAND AND
6 TRANSCRIBED BY COMPUTER UNDER MY SUPERVISION.

7 THIS THE 22ND DAY OF AUGUST, 2011.

8
9 /S/ DONNA J. TOMAWSKI

10 DONNA J. TOMAWSKI
11 OFFICIAL COURT REPORTER
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